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**DRAFT REMARKS**

Discussion By Paragraph of the Office Action:

1. The Examiner informs Applicants that the submission was entered; no response necessary.
2. The Examiner informs Applicants that the claims are not correctly numbered; no response necessary.
3. The Examiner directs Applicants to renumber the claims; such renumbering is reflected in this amendment.
4. The Examiner objects to the previous amendment under 35 U.S.C. 132 because it introduces new matter into the disclosure of the invention.

a) The Examiner states that on page 4, line, 8, the addition of a "ribbon" being cut away is new matter unsupported by the original disclosure. Applicants would like to point to page 5, lines 1 - 2 of the original disclosure that describes a channel that "guides the product so that it rolls around itself in the channel." Applicants suggest that in order for a layer of food product to roll around itself, the thickness of the layer would be relatively thin. Therefore, describing the layer as a ribbon would be supported. However, Applicants are willing to delete "ribbon" from the specification to put the application in better condition for allowance.

b) The Examiner states that on page 4, line 17 the deletion of "and forms it into the desired shape and size for the serving" is considered to be new matter in that it changes the content and meaning of the original disclosure. Applicants would like to point out that the frozen food product rolls around itself in the channel as it moves towards the collection compartment. When the food product reaches the end of the channel or collection compartment, it has rolled around itself in a channel with a semi-circular cross section, and therefore, is generally at least

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round, if not spherical, in shape. Because the food product enters the collection component in a generally round shape, any forming or shaping done by the collection component is more cosmetic than functional. Applicants disagree that the content and meaning of the original disclosure is changed, but would agree to insert the aforementioned phrase back in the specification to place the application in better condition for allowance.

c) The Examiner states that on page 5, lines 6 - 9, the deletion of the serving portions being controlled by "the size of the channel in the scoop" and "the forming and dispensing means" is considered to be new matter in that it changes the content and meaning of the original specification. Applicants agree to insert the aforementioned phrases back in the specification to place the application in better condition for allowance.

d) The Examiner states that on page 7, lines 12 - 13, the addition of the product emerging through the opening of the scoop "in a generally spherical shape" is new matter unsupported by the original disclosure. Applicants would like to point out that the frozen food product is rolled around itself along the length of a channel with a semi-circular cross section. Although Applicants believe spherical is supported in the original disclosure, Applicants would suggest changing the word "spherical" to "round" in the specification to place the application in better condition for allowance.

e) The Examiner states that on page 11, lines 20 - 21, the deletion of "the cross-sectional area of the channel, the forming and dispensing means" as factors in controlling the amount of product dispensed, is considered to be new matter in that it changes the content and meaning of the original disclosure. Applicants will insert the aforementioned phrase in the specification to place the application in better condition for allowance.

5. Quotation of 35 U.S.C. 112 first paragraph. No response necessary.

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6. The Examiner rejects claims 14 - 35 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states that in claim 14, lines 9 - 10, the product "rolled back on itself into a spherical shape" lacks support in the original disclosure. Applicants point to page 5, lines 1 - 2 of the original disclosure which describes a channel that "guides the product so that it rolls around itself in the channel." If the product rolls around itself in a channel with a semi-circular cross section, the end result, if not spherical, could at least be described as round. Applicants have suggested an amendment to the claim that would clearly describe the product movement. Also in claim 14, lines 13 - 14, the Examiner states the collection compartment having "at least a partially closed portion directed towards said first side of said removal portion" lacks support in the original disclosure. Applicants direct the Examiner's attention to Figure 1 to find support for this feature in the original disclosure. The first end portion 28 shows a partially closed portion directed towards the first side of said removal portion.

In claim 15, lines 3 - 5, Examiner states the collection component "having a shape generally conformable to said interior wall of said collection compartment" and "positionable during its operation to generally abut at least a portion of said interior wall" both lack support in the original disclosure. Applicants direct the Examiner's attention to Figures 3 and 4 to find support for these features in the original disclosure. In Figure 3, the open end of the collection component 34 is shown adjacent the collection compartment 32. Figure 4 shows the collection component in a position inside the collection compartment 32. Figure 3 shows that the collection component 34 is shaped to conform to the interior wall of the collection compartment 32, and Figure 4 shows the collection component 34 in a position to abut at least a portion of the interior wall of the collection compartment 32. Also in claim 15, line 10, the Examiner states that the

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operator actuatable assembly being "responsive to operator input" lacks support in the original disclosure. Applicants again direct the Examiner's attention to Figures 3 and 4 to find support for this feature in the original disclosure. Figures 3 and 4 show handles 42 and 44 connected to bar members 36 and 38 that are used by an operator to change the position of the collection component 34 within the collection compartment 32. In addition, the original disclosure, at page 6, lines 5 - 7 states the "operator can rotate either bar member 36 or 38 thereby rotating an edge of the cup 34 through the product". Applicants would be willing, however, to replace the words "and responsive to operator input to effect operation of said dispensing portion" with the word "operable" in claim 15 lines 10 - 11 in order to put the application in better condition for allowance.

In claim 16, the Examiner states that the retrieval arm being "spirally shaped" lacks support in the original disclosure because the arm is disclosed as being "curved" in the original disclosure. At page 3, line 21, the channel is described as "curved". At page 5, line 5, the channel is described as "tapered". Applicants suggest replacing the words "spirally shaped" with the words "curved and tapered" in the claim to place the claim in better condition for allowance.

In claim 19, the Examiner states that the collection component including "a flexible member connected along at least a portion of its periphery to said interior wall of said collection compartment to abut said interior wall when in a static condition" lacks support in the original disclosure. Without acknowledging that any new matter was added, applicants would like to cancel claim 19 to put the application in better condition for allowance.

In claim 23, the Examiner states that the leading edge being "a knife shaped edge" lacks support in the original disclosure. Applicants would like to replace the word "leading" with "trailing" as it should have originally been written. On page 9, line 5 of the original disclosure,

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the trailing edge is described as a cutting edge. If the Examiner objects to describing the trailing edge as "knife shaped", Applicants would be willing to replace "knife shaped" with "tapered cutting".

In claim 30, line 4, the Examiner states that "extend generally spirally" lacks support in the original disclosure. Applicants would like to replace the word "spirally" with "curvilinearly" which would be supported by Figure 1 and page 5, lines 10 - 11 when it states that the channel is "curved" along its length. Also in claim 30, lines 13 - 14, the Examiner states the collection compartment including "a closed side adjacent the terminus of said trailing edge" lacks support in the original disclosure. Applicants direct the Examiner's attention to Figure 1 which shows a partially closed side at the end of the trailing edge. Applicants suggest inserting the words "an at least partially" before the word closed in the claim. Also in claim 30, line 16, the Examiner states that the "interior of said collection compartment having a generally spherical shape" lacks support in the original disclosure. Applicants direct the Examiner's attention to Figures 3 and 4 which show the collection component adjacent and inside the collection compartment. In addition, claim 7, line 5 - 6 of the original disclosure described "a central enlarged spherical portion adjacent the opening" at one end of the channel. Also in claim 30, Applicants replace the word "thereinto" with the words "into said collection component" at line 14 for clarity.

In claim 32, lines 2 - 3, the Examiner points out that the movable portion being "sized and configured to be brought into close abutment with at least a portion of said interior wall of said collection compartment" and lines 6 - 7 "into and away from close abutment with at least a portion of said interior wall of said collection compartment" both lack support in the original disclosure. Applicants direct the Examiner's attention to Figures 3 and 4 wherein the collection

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component is shown adjacent to and in close abutment with the collection compartment, as well as against the interior of the collection compartment.

In claim 33, line 2 the Examiner states that "a disc-like portion sized and dimensioned to cover a substantial portion of the open end of the ice cream container" lacks support in the original disclosure. Page 2, lines 18 - 19 describe the assembly as "designed to be mounted on and adjacent to a container of food product and to extend substantially across on half of the opening of the container". Applicants also direct the Examiner's attention to Figures 7 and 8 which show the assembly mounted on the lid of the frozen food product. At page 10, line 5 - 6, describes these figures and mentions a lid containing the scoop member. In addition, on page 9, lines 20 - 22, the process of installing the assembly (in the lid) "with the container before it is distributed, and disposing of" the assembly after the product is gone.

In claim 35, the trailing edge having "a knife-like front edge" lacks support in the original disclosure. On page 9, line 5 of the original disclosure, the trailing edge is described as a cutting edge. Applicants suggest changing the word "a knife-like front" to "an" to place the claim in better position for allowance.

7. The Examiner quotes 35 U.S.C. 112 second paragraph; no response necessary.
8. The Examiner rejects claims 14 - 29 and 34 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 14, lines 14 - 15 the Examiner states that "having an interior wall" is indefinite as to which structural element is being referred to. In claim 14, line 14, Applicants have suggested an amendment which would show a clear reference to the collection compartment.

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In claim 15, lines 11 - 12, "said closed side of collection compartment" lacks proper antecedent basis in the claims. Applicants would like to add the words "at least partially" before the word "closed" in claim 15 to agree with the antecedent basis provided in the claims.

In claim 19, the Examiner states that the structural relationship between the collection component and the "flexible member" is unclear and indefinite, such that the claim is incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. Applicants would like to cancel claim 19.

In claim 26, the Examiner points out that the claim should clarify that the channel being "generally semi-circular" refers to the cross-sectional shape of the channel. Applicants will amend claim 26 in accordance with the Examiner's direction.

The Examiner points out that claims 28 and 29 should depend from claim 15 in order to provide the proper antecedent basis for "said dispensing portion" and said collection component". Applicants will amend claims 28 and 29 to depend from claim 15.

In claim 34, line 3 - 4, the Examiner points out that "said retrieving portion" lacks proper antecedent basis and should apparently be changed to "said removal portion". Applicants will amend claim 34 to replace the word "retrieving" with "removal".

9. The Examiner quotes 35 U.S.C. 102(b); no response necessary.

10. The Examiner rejects claim 1 - 7 and 9 - 13. Applicants intended to cancel originally numbered claims for the parent application in the last communication with the Examiner.

Applicants hereby confirm their cancellation of claims 1 - 7 and 9 - 13 by this amendment.

11. The Examiner rejects renumbered claim 14 - 17, 20, 22 - 26, and 30 - 35 presented and numbered as 1 - 4, 7, 9 - 13, and 17 - 22 in the RCE amendment filing under 35 U.S.C. 102(b) as being anticipated by Whiteside, U.S. Patent No. 1,638,134. The Whiteside device cannot

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anticipate the present invention. The Whiteside device does not have a channel with a leading and a trailing edge. It has a scraper arm that pushes ice cream into a slot that extends along the length of the scraper arm as the device is turned. The housing on the second (upper) side of the Whiteside device receives the ice cream being pushed through the slot. As the device continues to turn, the pressure from later scraped ice cream compresses and pushes the earlier scraped ice cream through the housing on the second (upper) side towards the opening at the center of the device on the second (upper) side. In contrast, the present invention shaves a layer of ice cream into a channel with a leading and a trailing edge. As the present device continues to turn, the layer of ice cream follows the contour of the channel and rolls around on itself. The ice cream is not compressed or pushed through a slot. It is rolled and guided along a channel that extends along the first (or lower) side of the removal portion.

The Examiner states that the Whiteside device has a "retrieval arm including a leading edge and a trailing edge 20 extending further than the leading edge ... , a spiral tapered channel 19 having a semi-circular C-shaped cross-section defined between the leading and trailing edges". The Whiteside does not show a "tapered channel 19 having a semi-circular C-shaped cross-section defined between leading and trailing edges". At page 2, lines 5 - 13, of the Whiteside patent, it says "a slot 19" permits the upward passage of the film or shaving of ice cream into the space formed by the wall 19, and the slope of this wall directs the ice cream so ejected by the lip to flow or crowd toward the centre of the handing device C and emerge from the head 18". The Whiteside patent makes no mention of a tapered channel and Figures II, III and V show the slot to be the same width along its length. The Whiteside patent does not mention a channel; it only describes a slot 19" at page 2 line 5. This slot 19" is never described as having a semi-circular C-shaped cross section. At page 2, lines 8 - 9, the slot 19" is described as



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"the space formed by the wall 19", and at page 1, lines 102 - 103 as "a recess from its centre to the periphery at one side, with an inclined wall 19". The wall 19 is only described as "inclined" on page 1, lines 102 - 103, and as having a "slope" at page 2, line 8. The slot 19" of the Whiteside device is not comparable to the channel of Applicants device because the channel has a leading and trailing edge, it is tapered, and it has a semi-circular cross-section.

The Examiner discusses the collection compartment of the Whiteside device as "having at least a partially closed portion directed towards the lower first side of the removal portion". The collection compartment of the Whiteside device is described at page 1, line 108 as the "cavity 19". (Whiteside uses the number 19 to refer to the wall *and* to the cavity formed at the center of the device. He uses 19' to describe the slope of the wall at the center of the device and 19" to describe the slot or path of the ice cream.) This cavity 19 is at the bottom of shank 17, and it is located on the second (upper) side of the Whiteside device. The incline of the wall 19' matches the shape of the collection component or scoop 23. The incline of the wall 19' does not partially close the slot 19" on one side of the device. Figures II, III and V of the Whiteside patent show that the cavity 19 is round in the center of the device with no partial closure. The collection compartment of the Whiteside device is essentially the round portion at the end of the slot and the bottom of the tubular shaped shank 17. Applicants device uses a channel with a contour such that the end near the collection compartment is partially closed

12. The Examiner quotes 35 U.S.C. 103(a); no response necessary.

13. The Examiner discusses the ramifications of joint inventors. Each of the inventors contributed to the independent claims, and therefore to each dependent claim as well.

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14. The Examiner rejects renumbered claims 18, 21, and 27 - 29 presented and misnumbered as claims 5, 8, and 14 - 16 in the RCE amendment filing under 35 U.S.C. 103(a) as being unpatentable over Whiteside U.S. Patent No. 1,836,134.
15. The Examiner lists the prior art not relied upon; no response necessary.

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As directed by the Examiner, the claims in this application have been renumbered. Claim 14 is an independent claim directed to an assembly for dispensing frozen food product from a container. Claims 15 - 27 depend from claim 14; claims 28 - 29 depend from claim 15. Claim 30 is an independent claim. Claims 31, 32 and 35 depend from claim 30; claim 33 depends from 32 and claim 34 depends from claim 33.

Applicants believe that all the claims of this application contain limitations which patentably distinguish them over the cited prior art and their allowance is hereby respectfully requested.

Authorization is hereby provided to charge any underpayment of fees or any additional fees due with respect hereto to our Deposit Account No. 08-1280.

Applicants' attorney looks forward to a telephone discussion with the Examiner regarding the issues raised in this draft amendment.

Respectfully submitted,

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